THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.23394 of 2006

Date:22 -11-2007

Between:

Aditya Institute of Technology and Management,
Tekkali, Srikakulam District,
rep. by its Senior Assistant-Administration, K.Appa Rao

Petitioner

And

Union of India, rep. by its Secretary,
Ministry of Shipping, Road Transport & Highways, Central Secretariat, New Delhi and others

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 23394 of 2006

ORDER:

1. Heard Sri P.Venugopal, the learned counsel representing petitioner and Sri S.S.Verma, the learned additional standing cou National Highways Authority of India–respondents.

2. This court ordered notice before admission on 10-11-2006. affidavit had been filed. Sri Venugopal, the learned counsel repre the writ petitioner had taken this court through the circulars and maintain that even if the circulars are taken into consideration, petitioner is entitled for the relief prayed for.

3. The learned counsel pointed out to the relevant portions of t circular and the present circular as well and would maintain that petition is bound to succeed.

4. On the contrary, Sri S.S.Verma, had taken this court thro contents of the counter affidavit and would maintain that by virtu present circular, the prior circular had been duly superseded and the contention of the petitioner that the benefit was available under the circular of year 2002 is incorrect and as per the circula 29-03-2005 monthly passes with the user fee Rs.1,000/- per month be issued specifically to the school buses only but not all the edu institutions and as per National Highways Authority of India' s (hereinafter referred to as ' the NHAI') policy circular, the Stat Transport Buses were issued monthly passes by paying @ 3 single user fee and hence the petitioner is not entitled to the reliefs for.

5. Heard the counsel and perused the record.

6. The writ petitioner-Aditya Institute of Technology and Mana Tekkali, Srikakulam District, represented by its Senior As Administration filed the present writ petition praying for writ of Ma to declare the Circular No.NHAI/13013/19/02-03/CMD-CO/Conc Vol. III, dated 29-03-2005 and the consequential No.11053/NHAI/PIU/SKL/5608, dated 5.8.2006, as being discrim illegal, arbitrary and violative of Article 14 of the Constitution of Inc far as it is against the petitioner institution and consequently di respondents to forthwith issue monthly passes to the buses of p i.e. 1) AP 30 T 5399, 2) ATN 6023, 3) AP 35 T 4527, 4) AP 35 5) AP 26 T 0723, 6) AP 26 T 0724, 7) AP 30 U 3730, 8) AP 16 W. (AP 05 TT 3421, 10) AP 03 U 4041, 11) AEN 1709, 12) ATN 9066 AP 30 T 8061 as is being given to the school buses as per the dated 29.3.2005 and pass such other orders.

7. The writ petitioner states that it is a recognized institutior Government of Andhra Pradesh in accordance with the provis Andhra Pradesh Education Act, 1982 and the institution ha registered with the Registrar of Societies, Srikakulam. Further, it i that the NHAI had initially issued a circular dated 5.8.2002 and circular dated 5.8.2002 reads as hereunder:

"National Highways Authority of India
(Ministry of Shipping Road Transport & Highways)

No.NHAI/CM/RM-1/462 Dated:5.8.2002

CIRCULAR

Sub: Providing concession in Toll Fee

Tolling on various stretches has been started recently. During the tolling process, a lot of representations/grievances of individuals/Associations have been received by the field units and reported to this office.

After examining various representations regarding concession in toll fee, it has been decided with the approval of Competent Authority to provide following concessions in toll fee:

a) Local area passed at the monthly rate of Rs.150/- or the resident of Villages/towns falling without radius of 5 Km. from the toll plaza may be issued for their car/jeep/van on production of residence proof and the ownership proof of the vehicle for which pass is being asked.

This will not be applicable to commercial vehicles.

b) Short distance, travelers within district boundaries may be given monthly passes @ of Rs.500/- for their car/jeep/van on the production of their residence proof pertaining to the district in which toll plaza is situated and ownership proof of vehicle for which pass is being asked. Short distance passes can also be issued to the adjacent district residents if the location of toll plaza is less than 20 Km. from the adjacent district boundary.

This will not be applicable to commercial vehicles.

c) Monthly passes for the State Transport buses may be given at the specified rate in favour of State Government Transport on the certification by the Competent Authority (not less than General Manager, State Government Road Transport) certified the number of buses plying in the route per day. Whereas in case of Private local operators we may consider the same on production of their permit for the route operators and time-table of the route operation duty certified by the District Transport Authority.

d) Fee on pro-rate basis shall be charged from the local transport units on production of proof for plying within 20 Kms. i.e. goods challan for origin and destination clearly specifying the return details of the vehicle. The fee for such transport will be Rs.25/- for trucks/buses for each entry and Rs.15/- for Light Commercial Vehicles.

e) Monthly passed for the school buses, for scheme student crossing the toll plaza may be issued @ Rs.1000/- after obtaining the written request of the principal of the school along with recognition of the school and registration of the buses.

Sd/-

(R.B.Singh)
GM (CM)"

8. It is stated that in accordance with the said circular the pe institution was given benefit. Further it is stated that the resp authority had issued yet another circular dated 29-03-2005 a said circular reads as hereunder:

"National Highways Authority of India
(Ministry of Shipping Road Transport & Highways)

HA/13013/19/02-03/CMD-CO/Concession, Vol.III
29th March,2005

CIRCULAR NO.NHAI/COMMERCIAL OPERATIONS/56
HB: CONCESSIONS IN USER FEE TO LOCAL RESIDENTS PUBLIC FUNDED PROJECTS

Partial modification of earlier circular No.NHAI/CM/RM-1/462, dt.5.8.2002 (copy enclosed) with a view to providing consolidated instructions on the matter of concession in user fee to all residents, following instructions are issued for implementation with immediate effect in respect of erections/bridges under public funded projects.

Car/Jeep/Van

1. Local Area monthly passes at the monthly rate of Rs.150/-(Rupees one hundred and fifty only) for the residents of villages/towns/cities falling within a radius of 10 Km from the fee collection booths may be issued for their car/jeep/van on production of residence proof and the ownership proof of the vehicle for which the pass is being issued.

2. Local area monthly passes at the monthly rate of Rs.300/- (Rupees three hundred only) for the residents of villages/towns/cities falling within a radius of more than 10 Km and up to 20 Km from the fee collection booths may be issued for their, car/jeep/van on production of residence proof and the ownership proof of the

vehicle for which the pass is being issued.

Further details about eligible in above categories are given at Annex.A.

3. Monthly passes for the State Transport buses may be given at the specified rate in favour of State Government transport on the certification by the competent authority (not less than General Manager, State Government Road Transport) certifying the number of buses plying in the route per day. In case of private local operators we may consider the same on production of their permit for the route operations and timetable of the route operation duly certified by the District Transport Authority.

Monthly passes for the school buses, for school student crossing the toll plaza may be issued Rs.1000/- after obtaining the written request of the Principal of the school along with recognition of the school and registration of the buses.

Concessional fee shall be charged from the Local Transport Operators on production of proof for plying within 20 Kms. i.e. goods challan for origin and destination clearly specifying the return details for the vehicle. The fee for such transport will be Rs.25/- for trucks for each entry and Rs.15/- for light commercial vehicles.

General Instructions for facilitating implementation is enclosed at Annex. B.

These instructions will apply, for the time being, only to public funded projects and BOT (annuity based) projects, where departmental collection is in progress. Instructions for BOT (toll based) projects and public funded projects where collection is through franchisee/private contractor will be perused later on.

This issues with the approval of competent authority.

Sd/-

(M.M.Lohia)

General Manager (CO)"

9. The relevant portions of the circulars clauses c and e in the c dated 5.8.2002 and clause 3 in circular dated 29-3-2005 hac

specifically relied upon. Further specific stand had been taken reading of both the circulars, it is clear that the subsequent circul partially modified the earlier circular. As per the said circular, concessions in the user fee to local residents in resp erections/bridges in the public funded projects had been granted.

10. Further, it is stated that the said circular states that monthly p for the State Transport buses may be given at the specified favour of State Government Transport on certificate by the com authority (not less than General Manager, State Government Transport) certifying the number of buses plying in the route per c case of private local operators the same may be consider production of their permit for the route operations and time table route operation duly certified by the District Transport Authorit circular also states that monthly passes for the school buses, for students crossing the toll plaza may be issued at Rs.1,000/ obtaining the written request of the Principal of the school alon recognition of the school and registration of the buses.

11. Further it is stated that the petitioner institution in all has 13 bearing the following vehicle Numbers: 1) AP 30 T 5399, 2) ATN 3) AP 35 T 4527, 4) AP 35 T 4399, 5) AP 26 T 0723, 6) AP 26 T 0 AP 30 U 3730, 8) AP 16 W 0699, 9) AP 05 TT 3421, 10) AP 03 U 11) AEN 1709, 12) ATN 9066 and 13) AP 30 T 8061. The said bus in the route between the petitioner institution and in and arou vicinity which area is covered by toll plaza. It is also stated that in te the circular, dated 05.08.2002, concession to the petitioner instit buses was given. After the said circular is superseded by circular 29.03.2005, the petitioner made an application by furnishing requisite as is contained in the said circular. It is stated that the in of the circular is to benefit the students of the area, be it be sch

college and there cannot be any discrimination between the students and college students as either way they are students. I regard to the fact that the said circular granted certain concessi petitioner had made an application to the 3rd respondent on 27.0 enclosing the requirements as stated in the circular.

12. It is further stated that in spite of the fact that all the requis stated in the circular have been furnished to the 3rd respondent, t and 3rd respondents mechanically without application of minc issued letter dated 05.08.2006 referring to the circular which has superseded by the circular dated 29.03.2005 and stated that the r of the petitioner institution is rejected. In fact the petitioner in its dated 27.07.2006 and 18.08.2006 have requested the respond treat the buses run by the petitioner institution as school buses buses are run by the petitioner institution on no profit basis and t Road Transport Officer has also approved the buses of the pe institution as school buses and permitted to carry the students w evident from the C books of the vehicles. Even the petitioner has p tax as applicable to the school buses. The petitioner is not using buses for any commercial purpose and the bus fee which is co from the students is not even sufficient for fuel. It is further pleaded petitioner that a school bus means which is used for carrying the st whether they are from school or college and no discrimination sho shown whether it is a school bus or a bus carrying the students.

13. Further, it is stated that the very purpose of giving conces the buses is that the buses are run for the facility of the students ar are not used for commercial purpose. It is also stated th respondents cannot show discrimination between the students of s from the students of college. Whether it is school children and c

going students the purpose is for prosecuting studies. Even the co for giving concession to school buses is that a written request ha made by the Principal which has been done in the case of the pe and recognition of the school and registration of the buses are t respect of the petitioner institution. The petitioner institution is reco by the Jawaharlal Nehru Technological University. All the studen are prosecuting their studies should be treated equally. The co prescribed with regard to school buses has been made witho application of mind and hence it is arbitrary and hence it is viol Article 14 of the Constitution of India. No prejudice would be ca the buses of the petitioner institution are treated as school buses purpose of extending concession in the circular. Though as p earlier circular the concession was extended to the buses petitioner, in view of the supersession of the earlier circul respondents have rejected the case of the petitioner. The petitione that in the matter of granting concessions, there should n discrimination between the students as such. Since the respond discriminating the students of the petitioner institution by not ext the concession as extended to the school buses, the petitioner has out a case warranting interference by this court. It is also stated recently, the petitioner's buses were treated on par with school only when it came to this academic year i.e. 2006-07 the respo have taken a different stand.

14. The counter affidavit filed on behalf of the respondents ha sworn to by the Project Director, NHAI, PIU (GQ), Srika Respondent No.3 and as authorized representative of respond and 3.

15. It is stated that the National Highways Authority of Ind statutory authority established under the provisions of the N

Highways Authority of India Act of 1988 (hereinafter in short refe
as an Act for the purpose of convenience) and has been entruste
the responsibility of Development, Maintenance and Managem
National Highways and for matters connected thereof and inc
thereto.

16. The said NHAI has commenced collection of user fee at Ma
User Fee Plaza w.e.f. 01-01-2006 at 00.00 hrs, as per fee notif
published vide Gazette Notification No.S.O.1016 (E) datec
July,2005 issued by Central Government..

17. It is stated that initially NHAI HQ had issued Policy C
No.NHAI/CM/RM-1/462 dated 05/08/2002. Later another Policy C
No. NHAI/CO/56 dated 29/03/2005 duly superseding the earlier c
was issued by NHAI. As such, the petitioner's contention that the
was available to them under the circular of the year 2002 is incorre
based on assumptions and presumptions. As per the said circula
29/03/2005, monthly passes with a user fee @ Rs.1,000/- per mo
to be issued specifically for school buses only but not all the educ
institutions. As per NHAI Policy Circular, the State Road Tra
buses were issued monthly passes by paying @ 30 times singl
Fee i.e. 30 x Rs125/-= Rs.3,750/-. It is needless to say that th
circulars already had been referred to supra.

18. Further, it is stated that the school buses carrying school ch
crossing the User Fee Plaza are allowed concessional r
Rs.1,000/- per month after verification of documentary proof of ev
of recognition of School and Registration of Buses.

19. It is further stated that the said petitioner has appro
respondent No.3 in the month of April,2006 i.e. after the issue of
Circular NHAI/CO/56 dated 29/03/2005 for issue of concessional p

their college buses and the request of the petitioner was cons duly issuing monthly pass on payment of Rs.3,750/-. The pe again approached respondent No.3 vide his Letter AITAM/NHAI/TOLL FEE/ 2006-07 dated 27-07-2006 requesting fo of concessional pass @ Rs.1,000/- per month which is not av either in the Gazette published by Government of India or in the circular issued by NHAI.

20. It is submitted that the respondent had issued No.11053/NHAI/PIU-SKL/5608 dated 05-08-2006 stating tha request for concession could not be considered in view of the said circular. Further, it is to state that the Engineering College buses c Engineering students cannot be treated as school buses where children of tender age travel in the bus. The contention of petitior the Road Transport Officer approved the buses of their institut school buses is false and based on imagination and the petitione be put to strict proof for verification. Further, the request for conces pass can be considered only if the institution is a recognized schoc

21. It is also stated that the monthly pass was allowed for bu the petitioner as per Gazette Notification. It is further submitte Engineering institutions are collecting tuition fee in three di categories i.e. for those selected on merit basis; selected on payme management quota besides capitation fee etc. The policy circul been issued duly considering all the aspects. In view of the concessional pass @ Rs.1,000/- per month for the school buses available to the petitioner. These are the respective stands taken parties.

22. The specific stand taken in the counter affidavit is that in the the present circular governing the field the benefit is not available petitioner. It is needless to say that it is for the second respondent

policy decision in this regard. In the light of the facts and circums especially, in the light of the language of the later circular, this cou the considered opinion that the stand taken in the counter affidavi respondents cannot be found fault. But however, the petitioner educational institution, it is needless to say that the policy decisio taken by the second respondent in this regard. Let the petitioner r representation in the light of the facts and circumstances t respondents 1 and 2 in this regard within a period of four week today and let respondents 1 and 2 consider the said representati dispose of the same in accordance with law taking into considerat facts and circumstances of the case, within a period of 8 (eight) thereafter. Except giving the said liberty, no other relief can be gra the peculiar facts and circumstances of this case.

23. Accordingly, the writ petition is disposed of. No order as to co

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P.S.NARAYANA, J

22 -11-2007

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THE HONOURABLE SRI JUSTICE P.S. NARAYANA

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Date:22 -11-2007

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